

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1816 of 1998

with

First Appeal No.1824 to 1827 of 1998;

First Appeal No.1828 to 1836 of 1998;

First Appeal No.1837 to 1845 of 1998

Cross with

First Appeal No.5347 to 5355 of 1997

First Appeal No.5356 to 5364 of 1997

First Appeal No.5365 to 5369 of 1997

with

Civil Applications Nos.11629 to 11651 of 1998

in

First Appeals Nos. 5347 to 5369 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
- 1 to 5 : No

KANTIBHAI ISHWARBHAI CHAMAR

Versus

SPEICAL LAND ACQUISITION

OFFICER

Appearance:

FIRST APPEAL No 1816 of 1998

with

First Appeal No.1824 to 1827 of 1998;

First Appeal No.1828 to 1836 of 1998;

First Appeal No.1837 to 1845 of 1998

Mr. A.J. Patel for the appellant-claimants

Mr. U.A. Trivedi, AGP, for the State

First Appeal No.5347 to 5355 of 1997

First Appeal No.5356 to 5364 of 1997

First Appeal No.5365 to 5369 of 1997

Mr. B.D. Desai, AGP, for the appellant-State

Mr. A.J. Patel for the respondents

Civil Applications Nos.11629 to 11651 of 1998

in

First Appeals Nos. 5347 to 5369 of 1997

Mr.R.C. Jani for the applicants

Mr. A.J. Patel for the claimants

Mr.U.A. Trivedi & Mr. B.D. Desai, AGP, for
respondent-State

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 15/12/98

COMMON ORAL JUDGMENT : (Per: Kadri, J.)

1. First Appeals Nos. 5356 of 1997 to 5364 of 1997
with cross First Appeals Nos. 1837 of 1998 to First
Appeals No.1845 of 1998 against the common judgment and
award dated March 27, 1997 in Land Reference Cases Nos.
1338 of 1992 to 1346 of 1992, First Appeals Nos. 5365 of
1997 to 5369 of 1997 with cross First Appeals Nos. 1816
of 1998, 1824 to 1827 of 1998 against the common judgment
and award dated July 2, 1997 in Land Reference Cases Nos.
1713 of 1992 to 1717 of 1992, whereas First Appeals Nos.
5347 of 1997 to First Appeals Nos.5355 of 1997 with cross
First Appeals Nos. 1828 of 1998 to First Appeals Nos.
1836 of 1998 arise out of the common judgment and award
dated July 2, 1997 in Land Reference Cases Nos. 1268 of

1992 to 1274 of 1992, 1287 of 1992 and Land Reference Case No. 1392 of 1994. The appeals are filed by the Land Acquisition Officer and the Acquiring Body, whereas and the cross Appeals are filed by the claimants under Section 54 of the Land Acquisition Act, 1894, ('Act' for short), read with Section 96 of the Code of Civil Procedure. The lands of the claimants situated in the village Piyaj, which are subject matter in First Appeals Nos.1837 of 1998 to First Appeals Nos. 1845 of 1998 and Cross First Appeals Nos.5356 of 19978 to First Appeals Nos. 5364 of 1997, came to be acquired for the public purpose, namely, main canal of Narmada Project, pursuant notification under Section 4(1) of the Act, published on August 27, 1990. After considering the objections of the persons interested, a report under Section 5(A)(2) of the Act was made and, thereafter, declaration under Section 6 of the Act was published on January 21, 1991.

2. The Land Acquisition Officer made award on January 30, 1992 and offered compensation for the acquired lands of the claimants at the rate of Rs.3.90 paise per sq.mtr. Before the Land Acquisition Officer, the claimants had claimed compensation for the acquired lands at the rate of Rs.50/per sq.mtr. The claimants, being dissatisfied with the award of the Land Acquisition Officer, filed application under Section 18 of the Act requiring the Land Acquisition Officer to refer the cases to the District Court. The said applications were referred by the Land Acquisition Officer to the District Court, Mehsana, which came to be numbered as Land Reference Cases Nos. 1338 of 1992 to 1346 of 1992. Before the Reference Court, the claimants claimed compensation at Rs.50 per sq.mtr for the acquired lands situated at village Piyaj. They contended that the acquired lands were irrigated and fertile and they used to raise three crops and earned net income of about Rs.15,000/- to Rs.17,000/- per bigha in a year. About the situation of village Piyaj, the claimants stated that village Piyaj is adjacent to village Borisana and village Pratappura. They claimed that the whole village was declared as industrial area, and many industrialists were trying to purchase lands of their village. In the application, they stated that village Pratappura was at a distance of 1.1/2 kms to 2 kms away and the boundaries of both the villages were touching each other. It was claimed that the lands of village Pratappura and the lands of village Piyaj were of same fertility. Opponents Nos. 1 and 2, being the Land Acquisition Officer and the Acquiring Body, filed their reply to the reference applications and contended that compensation awarded by the Land Acquisition Officer was adequate and the

applications deserved to be dismissed.

3. Before the Reference Court, on behalf of the claimants, one Amrutbhai Mulabhai Parmar was examined at Exh.11. On behalf of the opponents, Deputy Mamlatdar, Mr. Ishwarlal Madhavlal Patel, was examined at Exh.50. Witness Amrutbhai Mulabhai who was one of the claimants, described the situation of village Piyaj. He stated that village Pratappura is at the distance of 1 to 1.1/2 kms from village Piyaj and boundaries of both the villages are touching each other. It is stated that the lands of village Pratappura were acquired by Oil & Natural Gas Commission in the year 1982. The claimants of the acquired lands of village Pratappura had sought references against the award of the Land Acquisition Officer in the District Court which were numbered as Land Reference Cases Nos. 62/86 to 64/86 wherein the District Court had determined the market price of the acquired lands of village Pratappura at the rate of Rs.20 per sq.mtr. The witness deposed that the acquired lands of village Pratappura and the lands of village Piyaj were having same fertility. He stated that Kalol town is at a distance of 4 kms and is connected by a pucca tar road. The witness was searchingly cross examined by the learned advocate for the opponent with regard to situation and fertility of the acquired lands but this part of his evidence has gone unchallenged in cross examination. The witness examined by the opponents, namely, Ishwarlal Madhavlal Patel (Exh.50). in his oral evidence, admitted that village Borisana was situated in the industrial area. He claimed that no industry was established in village Piyaj and all the lands were agricultural lands and compensation awarded by the Land Acquisition Officer was just and adequate. In cross examination, the witness admitted that the acquiring body has not obtained any report of experts with regard to nature and fertility of the acquired lands.

4. Before the Reference Court, neither the claimants nor the opponents produced any sale instance. The claimants had produced previous awards of the acquired lands of village Borisana and village Pratappura for the determination of the market value of the acquired lands of village Piyaj. The Reference Court, after taking into consideration the evidence relating to the income derived by the claimants from the acquired lands and after referring to the previous awards of the Reference Court with regard to the acquired lands of village Borisana and village Pratappura, placed reliance on the award Exh.43 in respect of the acquired lands of village Pratappura, and determined the market value of the acquired lands of

village Piyaj at Rs.20/- per sqmtr. The lands of village Pratappura which were subject matter of award Exh.43 were acquired for the ONGC and notification under Section 4 of the Act was published on 25.11.1982. The Land Acquisition Officer had awarded compensation of the acquired lands of village Pratappura at the rate of Rs.2/- per sq.mtr. The claimants of the acquired lands of village Pratappura had filed Land Reference Cases Nos.62/86 to 64/86 in the District Court, Mehsana. The learned Extra Assistant Judge, Mehsana, by judgment and award dated July 27, 1993, had determined the market value of the acquired lands of village Pratappura at Rs.20 per sq.mtrs. Relying upon the said award, the learned 4th Extra Assistant Judge determined the market value of the acquired lands of village Piyaj Rs.20/- per sq.mtr in Land Acquisition Case No.1338/92 to 1346/92 , giving rise to filing of the present appeals.

5. First Appeals Nos.1816 of 1998, with First Appeals Nos. 1824 of 1998 to 1827 of 1998 are filed by the original claimants, whereas First Appeals Nos.5365 of 1997 to 5369 of 1997 are filed by the State of Gujarat and the Acquiring Body, challenging the common judgment and award passed by the learned 4th Extra Assistant Judge, Mehsana, dated July 2, 1997, in Land Reference Cases No. 1713 of 1992 to 1717 of 1992. The lands of the claimants situated at Piyaj village, Taluka Kalol, came to be acquired pursuant to publication of notification issued under Section 4(i) of the Act, on August 22, 1990 for the public purpose, namely, main canal of Narmada Project. After considering the objections of the persons interest, a report under Section 5(A)(2) of the Act was made and, thereafter, declaration under Section 6 of the Act was published on April 10, 1991. The Land Acquisition Officer made award on January 30, 1992 and offered compensation for the acquired land of the claimants at the rate of Rs.3.90 paise per sq.mtr. The claimants had claimed compensation at the rate of Rs.50/per sq.mtr. Therefore, the claimants, being dissatisfied with the award of the Land Acquisition Officer, filed applications under Section 18 of the Act requiring the Land Acquisition Officer to refer the cases to the District Court. The said applications were referred by the Land Acquisition Officer to the District Court, Mehsana, which came to be numbered as Land Reference Cases Nos. 1713 of 1992 to 1717 of 1992. Before the Reference Court, the claimants claimed compensation at Rs.50 per sq.mtr for the acquired lands situated at village Piyaj. Before the Reference Court, the claimant of Land Reference Case No.1716 of 1992 Sakraji Visaji Thakore was examined at Exh.11. He

described the acquired lands as irrigated lands and having more fertility, out of which the agriculturists were taking three crops in a year and were earning Rs.15,000/ to Rs.17,000/- per bigha per year. With regard to the situation and locality of village Piyaj,, he stated that the village was having facility of electricity and was connected with other villages by pucca tar roads. He claimed that village Piyaj was included in the industrial area and Kalol town was situated at a distance of 4 k.m. It was stated that village Borisana was at a distance of 2 k.m. whereas village Pratappura was at a distance of 1.1/2 k.m. He claimed that village boundaries of villages Pratappura and Borisana and village Piyaj were touching each other and the lands of all the three villages were having similar fertility. During the oral evidence, he produced award Exh.43 of the acquired lands of village Pratappura. He also produced the award of Land Reference Cases Nos.1338 of 1982, 1346 of 1992, which are subject matter under challenge in First Appeals Nos. 1338 of 1998 to 1346 of 1998. Before the Reference Court, the award dated 27.3.1997 was mainly relied upon for the purpose of determination of compensation of the acquired lands of village Piyaj. The evidence of this witness with regard to fertility of the acquired lands and situation of the acquired lands of village Piyaj was not challenged by the opponents. On behalf of the opponents, namely, Acquiring Body and Land Acquisition Officer, the Deputy Mamlatdar, Shri Shankerbhai, was examined at Exh.48. According to this witness, the Land Acquisition Officer after taking into consideration the sale transaction which had taken place prior to five years of issuance of Section 4 notification had awarded Rs.3.90 per sq.mtr as compensation of the acquired land. He claimed that no industrial development had taken place at village Piyaj and the people of village Piyaj were mainly dependant on the agricultural income. In cross examination, the witness admitted that village Piyaj was situated at distance of 5 km. from Kalol town. The witness even though was serving as Deputy Mamlatdar showed his ignorance that the boundaries of villages of Pratappura, Borisana and Piyaj were touching each other.

6. In this group of the Land Reference Cases also, the claimants mainly relied upon the previous award of the Reference Court of the acquired lands of village Pratappura and Borisana and award passed in Land Reference Cases Nos.1338 of 1992 to 1346 of 1992 relating to acquired lands of village Piyaj to which reference is already made in the earlier part of the judgment. The Reference Court, after taking into consideration the

previous award of the Reference Court relating to acquired lands of village Pratappura Exh.43 and award in Land Reference Cases Nos. 1338 to 1346 of 1992 determined the market value of the acquired lands of village Piyaj at Rs.20 per sq.mtr, giving rise to filing of these appeals by the claimants, the State of Gujarat and the Acquiring Body.

7. First Appeals Nos.1828 of 1998 to 1836 of 1998 are filed by the original claimants, whereas First Appeals Nos.5347 of 1997 to 5355 of 1997 are filed by the State of Gujarat and the Acquiring Body, challenging the common judgment and award passed by the learned 4th Extra Assistant Judge, Mehsana, dated July 2, 1997, in Land Reference Cases No. 1268/92 to 1274/91, 1287/92 and 1392/94. The lands of the claimants situated at village Piyaj, Taluka Kalol, came to be acquired pursuant to notification issued under Section 4 of the Act, which was published on May 24, 1990, for the public purpose, namely, main canal of Narmada Project. After considering the objections of the persons interest, a report under Section 5(A)(2) of the Act was made and, thereafter, declaration under Section 6 of the Act was published on November 7, 1990. The Land Acquisition Officer made award on January 31, 1991 and awarded compensation for the acquired lands of the claimants at the rate of Rs.3.90 paise per sq.mtr. The claimants had claimed compensation at the rate of Rs.50/per sq.mtr. Therefore, the claimants, being dissatisfied with the award of the Land Acquisition Officer, filed applications under Section 18 of the Act requiring the Land Acquisition Officer to refer the cases to the District Court. The said applications were referred by the Land Acquisition Officer to the District Court, Mehsana, which came to be numbered as Land Reference Cases Nos. 1268/92 to 1274/91, 1287/92 and 1392/94. Before the Reference Court, the claimants claimed compensation at Rs.50 per sq.mtr for the acquired lands situated at village Piyaj. Before the Reference Court, the claimant of the Land Acquisition Case no.1274 of 1992, namely, Jivaji Chelaji Thakore, was examined at Exh.12. It was stated by the witness that the acquired lands were irrigated and fertile lands and they used to take crops three times in a year. He emphatically stated that he used to get net income out of the agricultural crop at Rs.15,000/- to Rs.17,000/- per bigha per year. With regard to the facilities prevailing at the village, he stated that the village was having electricity facility and was connected by tar roads to all villages and was included in the industrial area. He claimed that the taluka town of Kalol was situated at a distance of 4 k.m. from village

Piyaj, and village Piyaj is situated at a distance of 3 k.m. from the National Highway. He also stated that the boundaries of villages Pratappura, Borisana and Piyaj were touching each other and the lands of three villages were having the same fertility. During the oral evidence, he produced the earlier awards of acquired lands of village Borisana and Pratappura and claimed that the acquired lands which were subject matter of those awards were having the same fertility as compared to the acquired lands of village Piyaj. He also produced earlier award of the Reference Court dated March 2, 1997 passed in Land Reference Cases Nos. 1338/92 to 1346/92 which are subject matter of First Appeals Nos. 1837 to 1845 of 1998. During cross examination, no material was brought out so as to dislodge the testimony of this witness. On behalf of the acquiring body, the Deputy Mamlatdar, who was working under the Special Land Acquisition Officer, Narmada Project-18, Bhagwanbhai Shankerbhai, was examined at Exh.42. He stated that the Land Acquisition Officer had made his award on the basis of the sale transactions which had taken place prior to five years of the date of issuance of Section 4 notification and had rightly determined the market price of the acquired lands at Rs.3.90 per sq.mtr. In cross examination, he stated that he was not aware whether the acquired lands of village Piyaj were situated at a distance of 5 k.ms from town Kalol.

8. In this group of references also, the claimants mainly relied upon the previous awards of the Reference Court, relating to the acquired lands of village Borisana and Pratappura, and the award of the District Court, Mehsana, of the same village Piyaj rendered in Land Acquisition Case No.1338 of 1992 to 1346 of 1982. The Reference Court, after relying upon the award Exh.43 of acquired lands of village Pratappura and the earlier award in Land Refernece Case Nos. 1338 to 1346 of 1992 of village Piyaj, determined the market value of the acquired lands of village Piyaj at Rs.20/- per sq.mtr, which has given rise to filing of these appeals by the State of Gujarat and Acquiring Body and the claimants.

9. Civil Applications Nos. 11629 of 1998 to 11651 of 1998 have been filed by the Acquiring Body, namely, Executive Engineer, Construction Division, Narmada Canal, Ahmedabad, for production of additional evidence, which were ordered to be heard with main matters and therefore they are also being disposed of by this judgment.

10. As common questions of law and facts are involved

in these three groups of First Appeals, by consent of the learned advocates in these appeals we propose to dispose of the same by this common judgment.

11. Learned counsel for the claimants, Mr. A.J. Patel, has submitted that the Reference Court was not justified in not awarding adequate compensation of the acquired lands to the claimants. He, further, submitted that, as per the previous award Exh.43 in respect of the lands of village Pratappura which were acquired in the year 1982, the Reference Court had awarded compensation at Rs.20/- per sq.mtr and if appropriate increase in price of lands had been considered, the claimants would have been entitled to compensation at the rate of Rs.40/per sq.mtr. In this connection, it is submitted by the learned counsel for the claimants that the claimants have, therefore, restricted their claims in these appeals at the rate of Rs.40/- per q.mtr. for the acquired lands. The learned counsel for the claimants has submitted that the Division Bench of this High Court (Coram: Y.B. Bhatt & C.K. Buch, JJ.), in the group of First Appeals Nos.2523, 2524, 2526, 2528, 2529, 2531 to 2534 of 1997, decided on April 23, 1998, has determined the market price of the acquired lands of village Borisana at the rate of Rs.70/per sq.mtr, but as the claimants of these First Appeals had restricted their claim to Rs.50/-, the High Court has awarded Rs.50/- per sq.mtr to the claimants as compensation for the acquired lands of village Borisana. He submitted that the notification under Section 4(1) of the Act in the above First Appeals was published in the Government Gazette on September 7, 1989, and the lands of village Borisana were acquired for the public purpose, i.e. Kalol-Medaadaraj Road. The learned counsel, therefore, stressed that the judgment of the Division Bench of this High Court (Coram: Y.B. Bhatt & C.K. Buch, JJ.), in the group of First Appeals Nos.2523, 2524, 2526, 2528, 2529, 2531 to 2534 of 1997, provides 'good guidance' for determining the market value of the lands of village Piyaj as the village Borisana and the village Piyaj are situated adjoining each other and notifications under Section 4(1) of the act were also issued in near proximity of time. He has further stressed that the lands of village Borisana and village Piyaj are having same fertility and distance between village Piyaj and village Borisana is of 2 to 3 kms. The learned counsel for the claimants, therefore, submitted that the compensation awarded by the Reference Court is inadequate looking to the previous award of the Reference Court and the judgment of the High Court and, hence, the market value of the acquired lands should be determined at Rs.40/- per sq.mtr and the appeals of the

claimants may be allowed and the State appeals may be dismissed.

12. The learned Assistant Government Pleaders, Mr. U.A. Trivedi and Mr. B.D. Desai, on the other hand, submitted that the Reference Court erred in placing reliance on the previous award Exh.43 in determining the market price of the acquired lands of village Piyaj. It is submitted by the learned counsels for the Government that the lands of village Pratappura and village Piyaj were not of similar fertility and village Pratappura was nearer to Kalol town and, therefore, the Reference Court ought not to have placed reliance on the earlier award Exh.43 for determining the market price of the acquired lands of village Piyaj. It is further stressed by the learned counsel for the Government that no industrial development had taken place in the surrounding areas of village Piyaj and the acquired lands were agricultural lands and, therefore, the Reference Court ought to have determined the market price of the acquired lands as agricultural lands and it should not have taken into consideration the potentiality of the lands. The learned counsel for the Government stressed that the compensation awarded by the Land Acquisition Officer was just and adequate as he had taken into consideration all the materials placed on record while determining market price of the acquired land of village Piyaj at Rs.3.90 paise per sq.mtr. The learned counsel for the Government further stressed that the claimants had failed to lead cogent and reliable evidence before the Reference Court and, therefore, the Reference Court erred in enhancing the amount of compensation to Rs.20 per sq.mtr. The learned counsel for the Government submitted that the market value determined by the Reference Court of the acquired lands was highly excessive and, therefore, the appeals filed by the State Government may be allowed and the appeals filed by the claimants for enhancing compensation may be dismissed.

13. It is settled legal principle that previous judgments and awards of the Reference Court, if they relate to similarly situated adjacent lands and which has become final provide good guidance in determining the market value of the land acquired subsequently. There is no doubt that, a judgment of a court in a land acquisition case determining the market value of a land in the vicinity of the acquired lands even though not inter partes, could be admitted in evidence either as an instance or one from which the market value of the acquired land could be deduced or inferred. For a judgment relating to value of land to be admitted in

evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced, it must have been a previous judgment of court and as an instance, it must have been proved by the person relying upon such judgment by adducing evidence alliunde that due regard being given to all attendant facts and circumstances it could furnish the basis for determining the market value of the acquired land. The basis of the valuation as found by a competent court with regard to the neighbouring land which has become final has to be taken into consideration for determining the just compensation for lands acquired subsequently. The award passed by the Land Acquisition Officer may serve as a basis to determine the compensation but the order passed by the civil court on reference under Section 18 of the Act which has become final definitely binds both parties with regard to the price that was prevailing in that area.

14. Bearing in mind the principles laid down as stated above by catena of decisions of the Apex Court, we propose to examine whether award Exh.43 provides good guidance in determining the market price of the acquired lands. By award Exh.43, the lands of village Pratappura were acquired in the year 1982 and the market price was determined by the Reference Court at Rs.20/- per sq.mtr. The claimants adduced evidence with regard to distance between village Pratappura and village Piyaj. The claimants had led cogent and reliable evidence that village Pratappura is at a distance of 1.1/2 k.m. from village Piyaj and the agricultural lands were having the same fertility. The witness who was examined on behalf of the opponents, i.e. Acquiring Body and the Land Acquisition Officer, also admitted that village Pratappura was at a distance of 1.1/2 k.m. from village Piyaj. Therefore, in our view, award Exh.43 provides 'good guidance' for determining the market value of the acquired lands. It should not be forgotten that the lands of village Pratappura came to be acquired pursuant to issuance of notification under Section 4(1) of the Act on November 25, 1982 for ONGC. The Land Acquisition officer had awarded compensation at the rate of Rs.2.00 per sq.mtr and the claimants of those cases had preferred References Before the District Court, Mehsana. The District Court, Mehsana, by common judgment and award, dated July 27, 1993, had determined the market price of the acquired lands at the rate of Rs.20/- as prevailing on the date of notification. In the present groups of First Appeals, notification under Section 4(1) of the Act, was published on different dates ranging from May 1990 to August 1990. The public purpose is for the main

canal of Narmada Jalagar Yojna. There is a gap of eight years between publication of notification under Section 4(1) of the Act, because the lands of village Pratappura were acquired in the year 1982 whereas the lands which are subject matter of the present appeals were acquired in the year 1990. It is settled principle that normally the Court adopts 10% rise in price of the agricultural lands per year. If 10% rise in price per year is adopted. the price of the acquired lands of village Pratappura would come to Rs.42.60 paise. It is also settled principle, as propounded by the Apex Court, that in the land acquisition cases, for determination of market value of the acquired lands, some guess work is inherent and in absence of evidence, the Court can take resort to the guess work, which is permissible within the bounds of law. As there is a distance of 1.1/2 k.m. between village Pratappura and village Piyaj, and as village Piyaj was not well developed as village Pratappura and as village Pratappura was nearer to Kalol town than village Piyaj, we think it proper to deduct Rs.7.60 ps from the market value determined on the basis of previous award. Therefore, in our opinion, it would be just and proper and adequate to determine the market price of the lands of village Piyaj at Rs.35/- per sq.mtr.

15. The submission of the learned counsel for the claimants that, in determination of market value of the acquired lands, the judgment of the Division Bench of this Court rendered in the group of First Appeals Nos.2523, 2524, 2526, 2528, 2529, 2531 to 2534 of 1997, provides 'good guidance' for determining the market value of the lands of village Piyaj, deserves to be rejected. This Court is not aware as to what was evidence which was before the Division Bench while it fixed the market value of the lands of village Borisana, because village Borisana is at a distance of nearly 3 to 4 k.ms from village Piyaj. It has come in evidence of the claimants that village Borisana is nearer to town Kalol and various factories were established in village Borisana and industrial development had taken place in village Borisana as compared to village Piyaj and, therefore, in our opinion, the judgment rendered by the Division Bench of this Court with regard to determination of market value of the acquired lands of village Borisana, does not provide good guidance for determination of market value of the acquired lands of village Piyaj.

16. The contention of the learned counsel for the Government that the Reference Court ought not to have relied upon the previous award Exh.43 for determination

of market value of the acquired lands of village Piyaj, deserves no merit and is hereby rejected. The compensation awarded by the Land Acquisition Officer was grossly inadequate and, therefore, the Reference Court had relied upon the oral evidence of the claimants as well as on award Exh.43 for determination of market value of the acquired lands of village Piyaj. In absence of evidence with regard to sale instances, the Reference Court was left with no other alternative but to rely on the previous award Exh.43 for the determination of the market value of the acquired lands. Therefore, in our opinion, the Reference Court had not committed any error in placing reliance on the previous award Exh.43.

17. On behalf of the acquiring body, namely, Executive Engineer, Construction Division, Narmada Canal, Ahmedabad, Civil Applications Nos. 11629 of 1998 to 11651 of 1998 have been filed, presumably, under Order 41 Rule 27 of the Code of Civil Procedure for additional evidence. In the applications for production additional evidence, it is stated that the Land Acquisition Officer had fixed market value of the lands under acquisition on the basis of sale deeds of the surrounding lands, and the extracts of such sales during the last five years were taken into consideration. It is averred in the application that the documents on which the Land Acquisition Officer had placed reliance were not produced before the Reference Court. By filing these applications, the Acquiring Body has prayed that additional evidence regarding sale instances relied upon by the Land Acquisition Officer be permitted to be produced in these First Appeals. The learned counsel for the Acquiring Body, Mr. R.C. Jani, has vehemently submitted that the sale instances relied upon by the Acquiring body, if permitted to be produced in these First Appeals, would show that the prevailing market value of the acquired lands at the relevant time was lower than the market value determined by the Reference Court at Rs.20/- per sq.mtr. It is submitted by the learned counsel for the Acquiring Body that, if the documents annexed with the applications are permitted to be brought on record, it would enable the Court to pronounce the judgment effectively. In our opinion, none of the contentions raised by the learned counsel for the Acquiring Body deserves any merit, and the applications for production of additional evidence filed by the Acquiring Body cannot be entertained. It must be stated that in the applications no averment is made that the documents sought to be produced were handed over to the Land Acquisition Officer, who, representing the Acquiring Body, had, in turn, handed over those documents to the

learned advocate appearing for the Acquiring Body and State Government and that the learned Advocate had failed to produce the same before the Reference Court. No inaction or negligence is alleged against the learned advocate who appeared on behalf of the State Government and the Acquiring Body. It must be stated that, for the State Government and the Acquiring Body, the District Government Pleader had filed his appearance in the Reference Court on 26.10.1993. After the claimants' and the Acquiring Body's evidence was over, pursuis for closing evidence was filed by the District Government Pleader for both the opponents, namely, Special Land Acquisition Officer as well as the Acquiring Body, on 9.4.1997. The documents, which are sought to be produced by way of additional evidence, were already in possession of the Acquiring Body but were not produced for the reasons best known to them. The application for production of additional evidence in this Court does not fulfil the grounds as set out in Rule 27(1) of Order XLI of the Code of Civil Procedure. It is not the case of the Acquiring Body that the Court from whose award the appeal is preferred had refused to admit evidence which ought to have been admitted, nor the Acquiring Body which seeks to produce additional evidence, has established that notwithstanding the exercise of due diligence, such evidence was not within its knowledge or could not, after the exercise of due diligence, be produced by it at the time when the award appealed against was passed. We are of the opinion that this Court does not require any documentary evidence to be produced to enable it to pronounce the judgment or that for any other substantial cause, the production of additional evidence is needed. As stated earlier, the claimants had adduced sufficient evidence in the nature of previous awards for the determination of the market value of the acquired lands in the Reference Court. The additional evidence, which the Acquiring Body wants to produce was already in their custody when the land reference cases were tried in the Reference Court. The true test is whether the appellate court is able to pronounce the judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. As noted earlier, there was sufficient evidence before the Reference Court for determination of the market value of the acquired lands and, therefore, the applications for additional evidence cannot be entertained. No inaction is alleged on the part of the learned District Government Pleader who appeared for the Acquiring Body in the Reference Court. Therefore, on this ground, the applications for production for additional evidence deserve to be rejected. It must be stated that the

evidence, which is sought to be produced by way of additional evidence, are xerox copy of sale index. Mere production of xerox copy of sale instance or index is not admissible in evidence as per the legal principle laid down by the Supreme Court in the case Special Deputy Collector and another vs. Kurra Sambasiva Rao and others, reported in AIR 1997 Supreme Court 2625. In paragraph 8 of the reported decision, it is held as under:

"8. The best evidence of the value of property are the sale transaction in respect of the acquired land to which the claimant himself is a party; the time at which the property comes to be sold; the purpose for which it is sold; nature of the consideration; and the manner in which the transaction came to be brought out. They are all relevant factors. In the absence of such a sale deed relating to the acquired land, the sale transactions relating to the neighbouring lands in the vicinity of the acquired land. In that case, the features required to be present are: it must be within a reasonable time of the date of the notification; it must be a bona fide transaction; it should be a sale of land similar to the land acquired or land adjacent to the land acquired; and it should possess similar advantageous features. These are relevant features to be taken into consideration to prove the market value of the acquired land as on the date of the notification published under Section 4(1) of the Act. This would be established by examining either the vendor or the vendee. If it is proved that they are not available, the scribe of the document may also be examined in that behalf. Section 51-A of the Act only dispenses with the production of the original sale deed and directs to receive certified copy for the reason that parties to the sale transaction would be reluctant to part with the original sale deed since acquisition proceedings would take long time before award of the compensation attains finality and in the meanwhile the owner of the sale deed is precluded from using the same for other purposes vis-a-vis this land. The marking of the certified copy is per se is not admissible in the evidence unless it is duly proved and the witnesses, viz., the vendor or the vendee, are examined. This principle has been repeated in a catena of subsequent decisions of this Court."

The additional evidence sought to be produced is inadmissible for determining market value of the lands acquired in this case and, therefore, all the Civil Applications for production of additional evidence deserve to be rejected.

18. The reference court has directed to deduct 5% of the government share with respect to the lands which were new tenure lands. Direction of the reference court to deduct 5% of government share with respect of to the acquired lands which were new tenure lands is erroneous, in view of the decision of the Supreme Court in the case of State of Maharashtra vs. Babu Govind Gavate, reported in AIR 1996 Supreme Court 904. Question arose before the Supreme Court as to whether the government can deduct any amount from the compensation which was payable to the owner whose lands were compulsorily acquired under the Act. The Supreme Court, after considering the scheme of Section 43 of the Bombay Tenancy & Agricultural Lands Act and Section 23(1) of the Act, held that, when the State exercises its power of eminent domain and compulsorily acquires the land, the question of sanction under Section 43 does not arise and the State is not entitled to deduct any amount from the compensation which was awardable to the claimants-owners. In view of the settled legal principle propounded by the Apex Court, the Reference Court was not justified in deducting the amount of 5% being the share of the Government with respect to the acquired lands which were new tenure lands.

19. In the result, the appeals filed by the claimants are partly allowed and the market value of the acquired lands is determined at Rs.35/- per sq.mtr. The claimants shall be entitled to an amount at the rate of 12% on the market value for the period commencing on and from the date of the publication of notification under Section 4(1) to the date of the award of the Land Acquisition Officer or the date of taking possession whichever is earlier. The claimants shall also be entitled to solatium at the rate of 30% on the market value of the acquired lands. The claimants shall also be entitled to interest on the amount of market value at the rate of 9% for the first year of the taking over possession of the land, and after the expiry of the period of one year at the rate of 15% till the realisation of the amount. The direction to deduct 5% share of the Government from the amount of compensation in cases of new tenure lands is set aside. The appeals filed by the State of Gujarat and the Acquiring Body are dismissed. The Civil Applications for production of additional documents are also dismissed. However, there will be no order as to costs of the First Appeals as well as the Civil Applications for additional evidence. The Office is directed to draw decree in terms of the judgment.

(swamy)

